for which it was used and with regard to which it is competent as an admission. *Richards* v. *Morgan, supra,* 565. There would seem to be no difference in principle between evidence given *viva voce* or in writing. "Bearing in mind, that the true ground on which such evidence is admissible, is, that a party seeking to establish a fact by evidence * * * must be taken to assert the fact he so seeks to prove, it seems to me to follow, that oral evidence, so far as it shall appear to have been used to establish a specific fact, will be evidence against the party using it as an assertion of that fact * * *." *Richards* v. *Morgan,* supra, 565. Of course a party is not bound by all that his witness may say and it is difficult to determine which parts of the testimony the party relied upon as true. Because a party offering a witness generally represents him as worthy of belief, *Ins. Co.* v. *Hillmon* (1902) 188 U. S. 208, 215, it does not follow that he adopts the testimony beforehand in ignorance of its contents. Assent may be implied where the witness has been called for the purpose of proving a particular fact, *Richards* v. *Morgan, supra,* 564; *Bageard* v. *Traction Co., supra,* but not from mere silence where the purpose is not clear. Wigmore, Evid. § 1072 (3); but see *Wilkins* v. *Stidger* (1863) 22 Cal. 232. As an attorney's acts bind his client when done in the conduct of litigation, it would seem upon principle that evidence may be adopted in the argument or summing up, or on a motion for new trial, but it seems doubtful if the courts would go to this extent. See *Richards* v. *Morgan, supra,* 562. The argument would probably be that counsel was not asserting the truth of the evidence but was merely presenting it to be weighed by the jury.

In a recent case, *Sizer & Co.* v. *Melton & Sons* (Ga. 1907) 58 S. E. 1055, the evidence of an officer of the defendant corporation had been taken in another case by interrogatories. These interrogatories and answers were offered by the plaintiffs to show admissions of material facts, but were excluded on the grounds that the agents had no authority to make the admissions for the principal, see 3 COLUMBIA LAW REVIEW 494, and hence the case did not come within the first class (*supra*), and that there was no express or implied adoption by the defendant, as the interrogatories were not introduced in evidence by the corporation, and hence the case did not come within the second class (*supra*). The court went on to say that even if it had appeared that they were introduced on the former trial, that alone would not have made them admissible, in the absence of proof as to the specific purpose for which they were introduced. This decision seems entirely sound.

FUNDAMENTAL PRIVILEGES AND DISCRIMINATION UNDER ARTICLE FOUR, SECTION TWO, OF THE UNITED STATES CONSTITUTION.—Article four, section two, of the United States Constitution provides that "the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states." A similar provision is found in the Articles of Confederation (Art. 4) and the purpose of both provisions was to form a close bond of union and comity by the abolition of interstate alienage. Accordingly the courts have held that privileges and immunities are the fundamental rights "which belong of right to citizens of all free governments" and "which have at all times been enjoyed by citizens of the several states." *Corfield* v. *Virginia* (U. S. 1823) 4 Wash. 371; *Paul* v. *Virginia* (U. S.

1868) 8 Wall. 168, 180. It has been held that among others the right to pass into another state and engage in trade, *Ward* v. *Maryland* (1870) 12 Wall. 814, to hold property, *Farmers' etc.* v. *Chicago etc. Ry* (1886) 27 Fed. 146, to institute an action, *Davis* v. *Pierce* (1862) 7 Minn. 13; *Cole* v. *Cunningham* (1889) 133 U. S. 107, 114, and to be impartially taxed, *Ward* v. *Maryland, supra; Wiley* v. *Palmer* (1848) 14 Ala. 627; *Sprague* v. *Fletcher* (1896) 69 Vt. 69, are fundamental. A right to fall within this classification must attach because of citizenship. Thus the right of communal property under the marriage laws of Louisiana was not a privilege or immunity because it is attached not to the citizenship of the individual, but to the contract of marriage made or executed in the state. *Conner* v. *Elliott* (U. S. 1885) 18 How. 591. But all rights pertaining to citizenship are not fundamental. Thus political rights, since they do not "belong of right to citizens of all free governments" are regarded as special rather than fundamental privileges. *Minor* v. *Happersett* (U. S. 1874) 21 Wall. 162, 172. Similarly are classed rights in the common property in the state, *Corfield* v. *Virginia, supra; McCready* v. *Coryell* (1876) 94 U. S. 391, which, though attaching to citizenship, arise from special circumstances. Moreover, since political and common property rights attach only because of residence in the particular locality there would seem to be no injustice in discriminating concerning their enjoyment against non-residents. See *Chemung Canal Bank* v. *Lowery* (1876) 93 U. S. 72, and discussion *infra*. A wife's expectant right of dower has been placed in the same category, *Bennett* v. *Haines* (1881) 51 Wis. 251, although it is difficult to understand why dower should not be regarded with other property rights or privileges as fundamental. See *Farmers' Loan & Trust Co.* v. *Chicago Ry., supra.* The fourth article, while forbidding a state from discriminating between its own citizens and those of other states, does not guarantee to a visiting citizen all the rights which he may enjoy in his own state. *Lemmon* v. *People* (1860) 20 N. Y. 562. Furthermore if there is a just basis for the apparent discrimination, the constitutional prohibition will not apply. Thus where the law provided for the tolling of the statute of limitations in favor of resident creditors when the debtor was out of the state, there was no real discrimination against a non-resident, since the reason for the tolling of the statute did not apply in his case. *Bank* v. *Lowery, supra.* It seems also that a state may discriminate in the exercise of its police power. Cf. *Wiley* v. *Palmer supra.* Thus laws that liquor licenses should be granted only to residents, *Welch* v. *State* (1890) 126 Ind. 71, 78; *Mette* v. *McGucken* (1885) 18 Neb. 323, and laws allowing residents to practice medicine without submitting to an examination required of non-residents have been held valid. *State* v. *Green* (1887) 112 Ind. 462; *Harding* v. *People* (1887) 10 Colo. 387; *France* v. *State* (1897) 57 Oh. St. 1; *State* v. *Randolph* (1892) 23 Ore. 74. Finally it seems that the discrimination must materially affect a right of the non-resident. Thus a statute requiring non-residents to give security for costs is valid. *Hold* v. *Tennallytown etc. R. R. Co.* (1895) 81 Md. 219. See *Head* v. *Daniels* (1887) 38 Kan. 9. These cases might also be upheld on the ground that the discrimination was based on a real difference in the position of the non-resident.

In a recent case the widow of a citizen of Pennsylvania sued in Ohio

on a right of action given by Pennsylvania for the death of her husband alleged to have been killed in Pennsylvania by the negligence of the defendant. In accordance with an Ohio statute, which gave its courts jurisdiction in case of such actions only when the death was that of a citizen of Ohio, the State Supreme Court denied the plaintiff's right. The United States Supreme Court held that the statute was constitutional and did not deprive citizens of other states of the privilege accorded to citizens of Ohio. *Chambers* v. *Baltimore & Ohio R. R.* (1907) 28 Sup. Ct. 34. The opinion, affirming that the right to sue is a fundamental privilege, points out that since the denial of the right in this case did not depend upon the non-citizenship of the plaintiff there was no discrimination. According to the statute of Pennsylvania as interpreted by its court a right of action never vested in the deceased. *Fink* v. *Garman* (1861) 40 Pa. St. 95. It could not, therefore, be argued that the right of action was denied to the deceased when denied to its representative. It might be said, as was suggested in the dissenting opinion, that the statute discriminated against the deceased in denying to him the privilege of having his estate increased if he were killed by the negligent act of another. But such a privilege, novel and specially conferred, cannot be considered a fundamental right.

THE LAW GOVERNING THE LIABILITY OF A DRAWER OR INDORSER OF A NEGOTIABLE INSTRUMENT PAYABLE IN A FOREIGN JURISDICTION.—The contract of a drawer or indorser of a negotiable instrument, as distinguished from the contract of the acceptor or maker, being performable at the *locus contractus,* the liability of the drawer or indorser is generally measured by the law of the place where the instrument was drawn or indorsed. Story, Conf. of Laws, §§ 314, 315, and cases cited. A qualification is found in cases treating of conditions precedent to the liability of the drawer or indorser—formal acts associated with the place of payment—where the courts have recognized the requirements of business necessity. Logic would demand that questions of the necessity or sufficiency of any act upon which the liability under a contract is conditioned, should be determined by the law of the place where the contract was made and is to be performed; while practical expediency requires that acts such as demand, protest, and notice, which in their nature are performable where the instrument is payable, should be controlled by the law of that place. A distinction appears to be made between the necessity of the act and the sufficiency of the act. By the weight of authority, necessity of demand and protest as a condition of holding the drawer or indorser, is determined by the law of the place where the instrument was drawn or indorsed. *Thorp* v. *Craig* (1860) 10 Ia. 461; *Aymar* v. *Sheldon* (N. Y. 1834) 12 Wend. 439; *Gay* v. *Rainey* (1878) 89 Ill. 221. The necessity of suing the acceptor or maker in order to hold the drawer or indorser is similarly determined. *Levy* v. *Cohen* (1848) 4 Ga. 1; *Hunt* v. *Standardt* (1860) 15 Ind. 33. But the sufficiency of the demand and protest, including consideration of the time and manner, is determined by the law of the place where the instrument is payable, *Donnegan* v. *Wood* (1873) 49 Ala. 242; *Sylvester* v. *Crohan* (1893) 138 N. Y. 494. *Pierce* v. *Indseth* (1882) 106 U. S. 546, together with the maturity of the